

Ruppert



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Florida Industrial Electric, Inc.

**File:** B-240625

**Date:** November 27, 1990

Lawrence J. Phalin, Esq., Mateer, Harbert & Bates, P.A., for the protester.  
S.J. Evans, National Aeronautics and Space Administration, for the agency.  
George Ruppert, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Where a bidder has submitted a bid bond which only contained a photocopy of the signature of the surety's agent as of the time of bid opening, the bid bond is of questionable enforceability and the bid is properly rejected as nonresponsive; since responsiveness cannot be established after bid opening, the defect in the bond cannot be cured by the bidder's submission of the original bid bond subsequent to bid opening.

### DECISION

Florida Industrial Electric, Inc. protests the rejection of its apparent low bid as nonresponsive under invitation for bids (IFB) No. 10-0038-0, issued by the National Aeronautics and Space Administration's (NASA) John F. Kennedy Space Center, for work involving the installation of fiber optic cable.

We deny the protest.

The IFB required each bidder to submit a bid guarantee on standard form (SF) 24 in the proper form and amount. Bids were opened July 3, and of the 15 bids received the apparent low bid was submitted by Florida Industrial in the amount of \$511,700. Florida Industrial's bid included a bond on SF 24 with a photocopied signature of the surety's agent. NASA determined that a photocopied signature rendered the bond unacceptable and thus rejected the bid as nonresponsive.

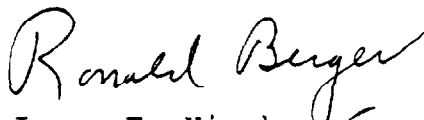
Florida Industrial contends that the fact that the surety's agent actually signed the SF 24 prior to bid opening operated to legally bind the surety in case of award, and that the fact

that only a copy of the bond was forwarded to NASA does not alter that obligation. Florida Industrial believes any defect in its bond should be correctable as a minor bid informality.

The determinative consideration concerning the acceptability of a bid bond is whether, in the event of a default by the bidder, the contracting agency could be certain that the surety would be bound, based on the information in the possession of the contracting agency at the time of bid opening. The King Co., Inc., B-228489, Oct. 30, 1987, 87-2 CPD ¶ 423. If the agency cannot determine definitely from the documents submitted with the bid that the surety would be bound, the bid is nonresponsive and must be rejected. Photocopies of bid bonds do not satisfy the requirement for a bid guarantee, because there is no way, other than examination of the originals after bid opening, for the contracting agency to be certain that there have not been alterations to which the surety has not consented, and that the government, therefore, is in fact secured. Id.

Here, since the bid bond submitted by Florida Industrial contained only a photocopied signature of the surety's agent, the agency could not definitely determine from the documents submitted with the bid that the surety would be bound; therefore, the bid was required to be rejected. Even if, as the protester contends, the surety was legally bound at all times, there was no way the agency could definitely know this on the basis of the documents submitted with the bid; without an examination of the original bid bond after bid opening, the contracting agency could not be certain that there had not been alterations to which the surety had not consented. In these circumstances, the bond deficiency may not be corrected after bid opening; otherwise, a bidder essentially would have the option, after bid opening, of accepting or rejecting the award by either correcting or not correcting the bond deficiency, which is inconsistent with the sealed bidding system. See Pollution Control Indus. of Am., B-236329, Nov. 22, 1989, 89-2 CPD ¶ 489.

The protest is denied.

  
L James F. Hinchman  
General Counsel